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Letter dated 30 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 2 October 2003 (S/2003/963). The Counter-Terrorism Committee has received the attached third report from Nicaragua submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 23 December 2003 from the Permanent Mission of Nicaragua to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of Nicaragua to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and transmits herewith its replies to the comments and questions of the Counter-Terrorism Committee concerning the supplementary report submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

Enclosure*

Report of the Republic of Nicaragua

Replies to the comments and questions of the Counter-Terrorism Committee concerning the supplementary report of Nicaragua submitted pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Managua, 22 December 2003

Progress report on the revision of domestic law and the study of a model law relating to terrorism

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;"

The draft bill on counter-terrorism aims at preventing and suppressing terrorist acts and any activity related to terrorism, especially acts that harm or threaten human life, social, economic and financial security, the security of the Nicaraguan State in particular and regional and international peace in general.

The bill would also introduce specific measures to strengthen the penal laws to ensure that terrorist acts and activities related to terrorism are punished as crimes and to authorize administration, freezing and possibly confiscation of financial and material assets used by networks or groups of persons for the illicit activities covered by the bill.

To accomplish that, the bill proposes to strengthen international cooperation and mutual legal assistance among the countries of the region with a view to taking specific measures in terms of border, financial, immigration and customs controls and to set rules governing some extradition matters.

The bill applies to the prevention, investigation and prosecution of terrorist acts and activities related to terrorism. Its scope of application is limited by the principles of non-intervention and respect for national sovereignty.

The provisions of the treaties, conventions and international agreements related to terrorism to which Nicaragua is a party are applicable provided that they are not incompatible with the Political Constitution.

The bill contains a chapter on the laundering of funds or assets derived from terrorist acts. The chapter deals with all matters pertaining to the laundering of funds

* Annexes are on file with the Secretariat and are available for consultation.

or assets, financing of terrorist acts, use of financial resources, obstruction of justice and non-compliance with the law, among other topics.

At present, the draft bill on counter-terrorism is under review in the National Assembly.

Legal obligation

("... legal obligation of banks, financial institutions and other intermediaries, such as lawyers, accountants and notaries, when involved in brokering activities, to report suspicious transactions to the relevant authorities")

Resolution 1373 (2001) states:

"[The Security Council,]

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;"

Nicaraguan law provides the following legislative and regulatory framework:

- Act No. 285 entitled "Act on Narcotic Drugs, Psychotropic Substances and Other Controlled Substances and Laundering of Money and Assets Deriving from Illicit Activities" (published in Official Gazette Nos. 69 and 70 of 15 and 16 April 1999);
- Regulations implementing Act No. 285, issued by Decree No. 74-99 (published in Official Gazette No. 124 of 30 June 1999);
- Regulation on the Prevention of the Laundering of Money and Other Assets Applicable to All Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, issued by Orde

CD-SIBOIF-197-2-Mar01-2002 (published in Official Gazette No. 71 of 18 April 2002).

With respect to the prevention of money-laundering, Act No. 285 establishes the obligation to maintain named accounts and prohibits the opening and maintenance of anonymous accounts or accounts held under fictitious or incorrect names; it establishes the obligation to verify, by precise and reasonable means, the identity, status as agent, domicile, legal capacity, occupation or line of business of the persons concerned, whether they are regular or occasional clients.

In addition, for every type of transaction, forms must be kept to identify (based on a legal, authoritative document) the signature and address of the person who is physically carrying out the transaction, the person in whose name the transaction is being carried out and the payee or beneficiary of the transaction. The institutions must take reasonable steps to obtain and preserve information about the persons for whom an account is opened or a transaction carried out, and they must put into effect verification programmes on knowing the client and creating client profiles.

General guidelines are set for the internal rules governing deposits which all entities authorized to take in funds from the public in the form of deposits must have, providing, among other things, for proper identification of the person who opens or accesses an account.

Act No. 285, with respect to the prevention of money-laundering, requires that special attention should be paid to transactions, whether completed or not, that are complex, unusual and significant and to all unusual patterns of transactions; to periodic transactions that have no obvious legal basis; to transactions which the institution knows, suspects or has reason to suspect are being used to conceal or launder funds and assets derived from suspicious activities or to evade the laws against money-laundering; and to transactions that apparently have no legitimate or normal purpose. Such transactions must be reported to the Superintendency of Banks and Other Financial Institutions.

It also provides that this "individual report of unusual activity" must be submitted to the Superintendency of Banks within the thirty (30) days from the date that the activity is detected that gives rise to the requirement of preparing and submitting the report.

With regard to penalties for failure to submit the report, Act No. 285 provides that natural persons (the owners or administrators of the institutions) shall be liable to a fine of from 10,000 to 60,000 córdobas and suspension of licence for from 3 to 24 months, without prejudice to the criminal liability that they may incur as accessories before or after the fact in accordance with the penal laws.

Freezing of assets

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or

participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities."

The draft bill on counter-terrorism deals with the freezing of accounts and deposits. The procedure established is handled through the Attorney-General of the Republic and/or the Chief State Counsel, who may request the competent judge to order the freezing of accounts and deposits of natural or legal persons under prosecution for alleged association with criminal activities.

As for the procedure for freezing funds of persons suspected of financing terrorist activities, a judicial authority may order, directly or through the Superintendency of Banks, the freezing or blocking of the accounts of persons accused or convicted of any illicit activity, including terrorism-related activities.

The details of transactions effected through such accounts — or through others that are not frozen — may be supplied to the competent authorities for the purposes of investigating and bringing charges, either upon a simple request of the Attorney-General of the Republic to the Superintendency of Banks or following an order of the judicial authority lifting banking or financial secrecy.

In principle, the judicial procedure for freezing funds is identical for both terrorism and money-laundering. However, in the latter case, it may also be preceded by the transmission of a suspicious transaction report from a bank to the Superintendency of Banks in accordance with the provisions of Act No. 285 and the Regulation for the Prevention of the Laundering of Money and Other Assets Applicable to All Financial Institutions under the Supervision of the Superintendency of Banks and Other Financial Institutions, which stipulates that banks and other financial institutions should provide information on any transaction that is suspected of being linked to money-laundering or that departs from the normal pattern associated with the account in question.

The Superintendency of Banks and Other Financial Institutions immediately transmits such reports to the Financial Analysis Commission, which is chaired by the Attorney-General. In conjunction with the circulars disseminating the lists of names of persons and entities suspected of being linked to terrorism, such reports could help to detect transactions that involve the diversion of funds to terrorist activities, either because the recipient of the funds has links to suspected persons or entities or because the subsequent investigation uncovers leads to them.

Recruitment of persons in its territory with a view to joining terrorist groups

("... terrorist groups operating either in its territory or abroad. It should be noted that recruitment to terrorist groups may be carried out by means of deception. For example, the putative purpose of recruitment may be one (e.g. teaching) which differs from its true purpose.")

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;"

One chapter of the draft bill on counter-terrorism covers all matters relating to terrorist acts and related activities. A chapter on the laundering of funds or assets derived from terrorist acts covers matters relating to participation in the commission of terrorist acts, use of financial resources, financing of terrorist acts and all matters relating to, inter alia, the transport, supply, sale, possession and manufacture of military weapons, chemical weapons, explosives, ammunition and explosive or lethal devices.

In order to deal with international crime, Nicaragua has had a National Plan against Terrorism and Related Offences since 2001 aimed at:

- Utilizing and expediting mechanisms for exchanging information about possible acts of terrorism at the domestic level and with national, regional and multilateral bodies;
- Strengthening port and airport security;
- Doing everything possible to monitor and track migratory movements in order to identify any movements made by persons linked to terrorism;
- Strengthening national legislation on terrorism, taking into account the relevant regional and international instruments; and
- Promoting the implementation of legislation for the prosecution and punishment of terrorism and related activities.

To date, it has not been established that any groups of persons or companies linked to this type of activity are present in Nicaragua, but mention should be made of the measures designed to control illegal trafficking set out in the National Plan against Terrorism and Related Offences.

With respect to deceptive means such as recruiting individuals by making them believe that they are being recruited for other purposes (e.g. teaching) and fund-raising through front organizations, the National Police, through the Department of Economic Investigations, is developing operational measures to carry out systematic monitoring of the entire national financial system. The Interpol National Central Bureau is set up to coordinate rapidly, where appropriate, with the Department of Migration and Alien Affairs in running checks on foreigners entering the country. Surveillance, patrolling and intelligence work are also being used to deal with possible terrorist activities.

As mentioned above, the draft bill on counter-terrorism contains specific provisions on fund-raising in the context of terrorist activities. Moreover, we are more than willing to cooperate closely. The Superintendency of Banks and Other

Financial Institutions has sent the entities under its supervision circulars containing the relevant lists provided through the Embassy of the United States of America and the Ministry of Foreign Affairs.

In October 2001, Nicaragua signed the 1999 International Convention for the Suppression of the Financing of Terrorism. The Nicaraguan parliament (National Assembly) ratified that Convention by means of Legislative Decree No. 3287, which was published in Official Gazette No. 92 of 20 May 2002. In addition, by means of Decree No. 62-2002, published in Official Gazette No. 121 of 28 June 2002, the President of the Republic ratified the United Nations Convention against Transnational Organized Crime, which had been approved by the Nicaraguan National Assembly by means of Legislative Decree No. 3246, published in Official Gazette No. 38 of 25 February 2002.

Progress report in regard to instruments relating to terrorism

There have been changes in regard to the list of the 12 international instruments relating to terrorism. Nicaragua acceded to the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979, by means of Decree No. 33-2003, published in Official Gazette No. 65 of 2 April 2003, and its accession was approved by Legislative Decree No. 3578, published in Official Gazette No. 118 of 25 June 2003. Nicaragua is also a party to the International Convention for the Suppression of Terrorist Bombings, ratified by means of Decree No. 61-2002; the instrument of ratification was deposited on 17 January 2003. The United Nations Convention against Transnational Organized Crime was ratified on 14 December 2000; deposit of the instrument of ratification is in process.

Nicaragua is not yet a State party to the following international instruments relating to terrorism:

1. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980;

2. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; and

3. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.

However, the Government is stepping up the pace of consultations with a view to becoming a State party to these three international instruments as quickly as possible.

Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities

Resolution 1373 (2001) states:

"*[The Security Council,]*

Acting under Chapter VII of the Charter of the United Nations,

3. Calls upon all States to:

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;"

The Government of Nicaragua is very interested in strengthening operational coordination mechanisms in order more effectively to combat crime and all other threats to democratic security, such as terrorism and related activities. To that end, it has undertaken to strengthen cooperation in preventing and combating all forms of criminal activities with regional or international implications and to prevent them from being planned, prepared and committed in Nicaraguan territory.

Nicaragua therefore participates in the Central American Plan for Comprehensive Cooperation to Prevent and Combat Terrorism and Related Activities and has taken a series of measures under the Plan, including:

- Improving and streamlining mechanisms for the exchange of information;
- Strengthening border, port and airport security;
- Making every effort to monitor and track migratory movements;
- Strengthening penal legislation by submitting prepared amendments to the penal code and a draft bill on counter-terrorism; both are under review by the National Assembly;
- Strongly condemning any existing link with international terrorism;
- Urging the legislature and the judiciary to put in place the necessary procedures for prosecuting and punishing such crimes against humanity by establishing adequate mechanisms to expedite that process; and
- Ensuring full enforcement of the relevant regional and international instruments.

Our security system should be registering a notable advance: we now have work plans based on the Framework Treaty on Democratic Security in Central America, including the National Plan against Terrorism and Related Offences, developed pursuant to the Central American Plan.

Since 2001, Nicaragua has had a National Plan against Terrorism and Related Offences; its primary objective is the adoption of adequate measures at the national level aimed at strengthening inter-agency cooperation in order to take effective action to prevent, combat and eliminate terrorism.

Our National Plan against Terrorism and Related Offences includes various guidelines and strategic actions which demonstrate the Government's determination to combat terrorism, with a focus on the following areas:

- Strengthening border, port and airport security;
- Strengthening penal legislation in order to authorize the freezing of funds derived from terrorist groups;
- Doing everything possible to monitor migratory movements in order to prevent persons with links to terrorism from entering the country; and

- Ensuring inter-agency cooperation in the exchange of pertinent information to prevent and combat terrorism.

The National Plan has its legislative basis in Executive Decree No. 108-2001 of 26 November 2001, which established the National Committee responsible for advising and supporting the Nicaraguan Government on all counter-terrorism matters, including the adoption of national and regional measures, the incorporation of relevant international instruments in domestic legislation and dissemination of their contents.

In addition, all the agencies involved in combating this scourge have implemented a timely, effective system for communicating with other Central American agencies and police and security forces. The National Police is also a member of the Association of Chiefs of Police of Central America, which operates under the Framework Treaty on Democratic Security in Central America and the Central American Integration System. These entities form a regional legal community to protect, supervise and promote human rights and ensure legal security.

The Department of Migration and Alien Affairs maintains an exchange of general and specific information on migratory movements, thereby facilitating analysis. Through the exchange of up-to-date information with national security and intelligence services, it also maintains a record of entries into and exits from Nicaragua by citizens of nationalities listed as restricted or of interest from the standpoint of combating transnational crime.

Assistance and guidance

The Government of Nicaragua is interested in receiving assistance and training in the preparation of draft legislation relating to the prevention and suppression of terrorism and to the passage of such bills. It would also welcome advice and assistance from the Global Programme against Terrorism of the United Nations Office on Drugs and Crime, specifically in the review of domestic legislation and on the drafting of laws incorporating international instruments relating to the suppression and prevention of terrorism in its domestic legal system.

It would also be very helpful to receive technical assistance in drafting legislation on combating money-laundering and the financing of terrorism and in reviewing bills already drafted for compliance with Security Council resolution 1373 (2001) and the provisions of the International Convention for the Suppression of the Financing of Terrorism.

Nicaragua also urgently requires training in the form of workshops, courses or seminars in the following areas:

- Intelligence;
- Air Force;
- Navy;
- Army: special operations and military border units;
- Crisis management;
- Types of links between terrorism and organized crime;

- Methods used by international terrorism to launder assets and transfer funds;
- Use or involvement of licit organizations in support of international terrorism;
- Use of social communication media by international terrorism;
- Training and equipping of units specialized in combating terrorism.